

NOV 18 1977

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77 - 807

In The Matter of EDWARD JOHN KAZUBOWSKI,
Bankrupt, (P-BK-71-782)

ANNA A. PHELPS,

Petitioner,

vs.

WILLIAM H. CHRISTISON, Trustee of the Bankruptcy Estate of
Edward John Kazubowski, HONORABLE STEPHEN J. COVEY,
Referee in Bankruptcy, United States District Court for the
Southern District of Illinois, Northern Division, and
THE UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANNA A. PHELPS

R.F.D. #4, South Euclid Ave.
Princeton, Illinois 61356

(An Attorney at Law admitted to the
Roll of Attorneys in the United States
District Court for the Southern District
of Illinois on June 21, 1955).

INDEX

| | Page |
|--|-------|
| Opinion below ----- | 2 |
| Jurisdiction ----- | 2,3 |
| Questions presented ----- | 3 |
| Constitutional Provisions involved ----- | 4 |
| Statutes involved ----- | 5-8 |
| Bankruptcy General Order involved ----- | 8-9 |
| Statement of the cases (3 appeals)----- | 10-37 |
| Reasons for granting the writ ----- | 38-46 |

I. The judgment and opinion of the Seventh Circuit Court of Appeals was entered without jurisdiction or exceeded the jurisdiction conferred upon the bankruptcy court in that the said judgment and opinion establishes on its face that no complete inventory of all the property of the bankrupt has ever been prepared by WILLIAM H. CHRISTISON, either as RECEIVER of the bankrupt's estate or as TRUSTEE of the bankrupt's estate as required of him pursuant to the provisions as unequivocally written in order 17(1) of the General Orders in Bankruptcy, and, further establishes on its face that no appraiser, or appraisers, have ever duly been appointed by the court in this estate as unequivocally required pursuant to Section 70 sub. f of the Act (11 U.S.C.A. §110(f)) and the procuring of the administration of this estate and the continued procuring of a corrupt administering of this estate was by the calculated omissions of statutory duties imposed upon the said TRUSTEE under order 17(1) and (2) of the General Orders in Bankruptcy, Section 47 of the Act (11 U.S.C.A. § 75) and Section 70 f

of the Act (11 U.S.C.A. § 110(f)), and by the overt acts of misconduct of the said TRUSTEE, repugnant to, inconsistent with and contrary to the bankruptcy law and the statutory duties imposed upon the office of trust of the said TRUSTEE, rendering the said judgment and opinion a wilful transgression of Article VI, Clause 2 of the United States Constitution, necessarily involving deprivations of petitioner's First, Fifth and Fourteenth Amendment Federal Constitutional rights and a grave injustice to petitioner, as well as to other bonafide creditors, and as well as to the bankrupt.

Conclusion ----- 47

APPENDIX

| | |
|--|-----|
| A - Opinion and judgment of court of appeals, dated August 22, 1977 ----- | 1a |
| B - Order of court of appeals, dated August 22, 1977 ----- | 8a |
| C - Order of court of appeals, dated April 16, 1974 (re: No. 74-1061)----- | 9a |
| D - Order of court of appeals, dated April 16, 1974 (re: No. 74-1062)----- | 10a |
| E - Order of court of appeals, dated April 16, 1974 (re: No. 74-1063)----- | 11a |
| F - Order of court of appeals, dated May 21, 1974 (re: Nos. 74-1061, 74-1062, 74-1063) ----- | 12a |
| G - Order of Court of appeals, dated July 9, 1975 (re: No. 74-1061)----- | 13a |
| H - Order of court of appeals, dated July 9, 1975 (re: No. 74-1063) ----- | 14a |

| | |
|---|-----|
| I - Order of district judge, dated Dec. 4, 1973 <u>Nunc pro Tunc</u> May 2, 1973, re: Referee's order dated January 15, 1973 ----- | 15a |
| J - Order of district judge, dated Dec. 4, 1973 <u>Nunc pro Tunc</u> May 2, 1973, re: Referee's order dated January 26, 1973 ----- | 16a |
| K - Order of district judge, dated Dec. 4, 1973 <u>Nunc pro Tunc</u> May 2, 1973, re: Referee's order dated February 16, 1973 ----- | 17a |
| L - Referee's Order dated January 15, 1973- | 18a |
| M - Referee's Order dated January 26, 1973- | 19a |
| N - Referee's Order dated February 16, 1973- | 20a |

CITATIONS

Cases:

| | |
|--|----|
| <i>Mosser v. Darrow</i> , 341 U.S. 267(1951)- | 45 |
| <i>Robb v. Connolly</i> , 111 U.S. 624 (1884)- | 46 |

TREATISE

| | |
|--|----|
| <i>Collier on Bankruptcy</i> , 14th Ed., Vol. 4A, pp. 1120-1121 (1967) ----- | 40 |
| <i>Collier on Bankruptcy</i> , 14th Ed., Vol. 4A, pp. 1122-1123 (1967) ----- | 41 |
| <i>Collier on Bankruptcy</i> , 14th Ed., Vol 4A, pp. 1125-1126 (1967) ----- | 41 |

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1977

NO.

In the Matter of EDWARD JOHN KAZUBOWSKI,
Bankrupt, (P-BK-71-782)

ANNA A. PHELPS,

Petitioner,

vs.

WILLIAM H. CHRISTISON, Trustee of the Bankruptcy
Estate of Edward John Kazubowski, HONORABLE
STEPHEN J. COVEY, Referee in Bankruptcy, United
States District Court for the Southern District
of Illinois, Northern Division, and THE UNITED
STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The petitioner Anna A. Phelps respectfully
prays that a writ of certiorari issue to review
the judgment and opinion of the United States
Court of Appeals for the Seventh Circuit entered
in this proceedings on August 22, 1977, concerning

three (3) appeals of petitioner, involving identical or closely related questions.

Petitioner files a single petition for a writ of certiorari to the said Court of Appeals.

OPINIONS BELOW

The Judgment and opinion of the Court of Appeals for the Seventh Circuit, not reported, is an "UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35", appears in the Appendix hereto. (APP. A.).

The three (3) orders and opinions of the District Court, not reported, appear in the Appendix hereto. (APP. I, J & K).

The three (3) orders of the REFEREE IN BANKRUPTCY, not reported, appear in the Appendix hereto. (APP. L, M + N).

JURISDICTION

The judgment and opinion of the Court of Appeals for the Seventh Circuit was entered on August 22, 1977. No petition for rehearing was filed because no oral arguments on the three appeals were permitted by an order of the said Court of Appeals. This petition for certiorari is filed within 90 days of August 22, 1977. This Court's jurisdiction is in-

voked under 28 U.S.C. § 1254(1).

In addition, this Court's power in bankruptcy is plenary.

QUESTIONS PRESENTED

I. Whether the judgment and opinion of the Seventh Circuit Court of Appeals was entered without jurisdiction or exceeded the jurisdiction conferred upon the Bankruptcy Court, in that the said judgment and opinion establishes on its face that from the outset of this estate no complete inventory of all the property of the bankrupt has ever been prepared by WILLIAM H. CHRISTISON, either as RECEIVER or as TRUSTEE of the bankrupt's estate as required of him pursuant to the provisions as unequivocally written in Order 17(1) of the General Orders In Bankruptcy, and, further establishes on its face that no appraiser, or appraisers, have ever duly been appointed by the court in this estate as unequivocally required pursuant to Section 70 f of the Act (11 U. S.C.A. § 110(f)), and therefore, the procuring of the administration of this estate and the continued procuring of a corrupt administering of this estate

by the calculated omissions of statutory duties imposed upon the said TRUSTEE pursuant to the requirements of order 17(1) and (2) of the General Orders In Bankruptcy, Section 47 of the Act (11 U.S.C.A. §75) and Section 70 f of the Act (11 U.S.C.A. § 110 (f)), and by the overt acts of misconduct of the said TRUSTEE, repugnant to, inconsistent with and contrary to the Bankruptcy Law and the statutory duties imposed upon the office of trust of the said TRUSTEE, renders the said judgment and opinion a wilful transgression of Article VI, Clause 2 of the United States Constitution, necessarily involving deprivations of petitioner's First, Fifth and Fourteenth Amendment Federal Constitutional rights, and a grave injustice to petitioner, as well as to other bonafide creditors, and as well as to the bankrupt.

CONSTITUTIONAL PROVISIONS

ARTICLE VI, CLAUSE 2.

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
(1 Stat. 97 (1787)).

STATUTES

United States Code:

11 U.S.C.A. §110 (f); Section 70 sub. f of the Bankruptcy Act, (prior to the Bankruptcy Rules and Official Forms, Eff. Oct. 1, 1973): (Title to Property):

"The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value. Whenever a sale of real or personal property of any bankrupt is made by or through an auctioneer employed by the court, receiver, or trustee, the auctioneer must be a duly licensed or authorized auctioneer in the place where the sale is to be conducted." (As revised by the Chandler Act (1938) and the A Act of Sept. 25, 1962, P.L. 87-681, § 10, 76 Stat. 571).

11 U.S.C. §75, Section 47 of the Bankruptcy Act (prior to the Bankruptcy Rules and Official Forms, Eff. Oct. 1, 1973), (Duties of Trustees):

"a. Trustees shall (1) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest; (2) deposit all money received

by them in designated depositories initially in demand deposits; and subsequently, if authorized by the court, in interest bearing savings deposits, time certificates of deposit, or time deposits-open account; (3) account for and pay over to the estates under their control all interest received by them upon funds belonging to such estates; (4) disburse money only by check or draft on such depositories; (5) keep records and accounts showing all amounts and items of property received and from what sources, all amounts expended and for what purposes and all items of property disposed of; (6) set apart the bankrupts' exemptions allowed by law, if claimed, and report the items and estimated value thereof to the courts as soon as practicable after their appointment; (7) examine the bankrupts (a) at the first meetings of creditors or at other meetings specially fixed for that purpose, unless they shall already have been fully examined by the referees, receivers, or creditors, and (b) upon the hearing of objections, if any, to their discharges, unless otherwise ordered by the court; (8) examine all proofs of claim and object to the allowance of such claims as may be improper; (9) oppose at the expense of estates the discharges of bankrupts when they deem it advisable to do so; (10) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (11) pay dividends within ten days after they are declared by the referees; (12) report to the courts in writing the condition of the estates, the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless other-

wise ordered by the courts; (13) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; and (14) lay before the final meetings of the creditors detailed statements of the administration of the estates." (July 1, 1898, c. 541, §47, 30 Stat. 557; Feb. 5, 1903, c. 487, §10, 32 Stat. 799; June 25, 1910, c. 412, § 8, 36 Stat. 840; June 22, 1938, c. 575, §1, 52 Stat. 860; May 8, 1963, Pub. L. 88-16, 77 Stat. 14).

11 U.S.C.A. § 11(a)(17), Section 2a(17) of the Bankruptcy Act; Creation of Courts of bankruptcy and their jurisdiction:

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to —

* * *

(17) Approve the appointment of trustees by creditors or appoint trustees when creditors fail so to do; and, upon complaints of creditors or upon their own motion, remove for cause receivers or trustees upon hearing after notice;" (As Amended by the Chandler Act (1938).

11 U.S.C.A. § 67(a)(8), Section 39a(8) of the
Bankruptcy Act: Duties of referees. . .
review of orders:

"(a) Referees shall . . . (8) prepare
promptly and transmit to the clerks certi-
ficates on petitions for review of orders
made by them, together with a statement
of the questions presented, the findings
and orders thereon, the petition for re-
view, a transcript of the evidence or a
summary thereof, and all exhibits;"
(July 1, 1898, c. 541, §39, 30 Stat. 555;
June 22, 1938, c.575, § 1, 52 Stat. 858;
June 28, 1946, c. 512, § 5, 60 Stat. 326,
July 7, 1952, c.579, § 12, 66 Stat. 424;
June 23, 1959, Pub.L 86-49, 73 Stat. 80;
July 14, 1960, Pub.L. 86-662, 74 Stat.
528; May 10, 1966, Pub.L 89-414, 80 Stat.
135).

BANKRUPTCY GENERAL ORDERS

Bankruptcy General Order 17, 28 U.S.C.A.

Order 17. Duties of Trustee:

"(1) The trustee shall, immediately
upon entering upon his duties, prepare a
complete inventory of all the property of
the bankrupt or debtor that comes into
his possession unless, prior thereto, a
receiver or other officer has prepared
such an inventory.

(2) The trustee shall make report to the
court, within five days after receiving
the notice of his appointment, unless fur-
ther time is granted by the court, of the
articles set off to the bankrupt or debtor
by him, according to the provisions of
section 47 of the Act, with the estimated
value of each article; and any creditor
or the bankrupt or debtor may file objec-
tions to the determination of the trustee

within ten days after the filing of the
report, unless further time is granted by
the court.

(3) In case the trustee shall neglect to
file any report or statement which it is
made his duty to file or make by the Act
or by these general orders, within five
days after the same shall be due, it shall
be the duty of the court to make an order
requiring the trustee to show cause, at a
time specified in the order, why he should
not be removed from office. The court
shall cause a copy of the order to be
served upon the trustee at least three
days before the time fixed for the hear-
ing.

(4) All accounts of trustees and receivers
shall be referred as of course to the ref-
eree for audit, unless otherwise specially
ordered by the judge." (As amended Apr. 17,
1933; June 1, 1936; Jan. 16, 1939; Mar. 3,
1958).

STATEMENT OF THE CASES

Three appeals of petitioner in the court below were consolidated by motion of the said court. Each case involves identical or closely related questions, being appeals numbered 74-1061, 74-1062 and 74-1063; each was docketed February 26, 1974, and each titled: In the Matter of Edward John Kazubowski, Bankrupt, (No. P-BK-71-782), Anna A. Phelps, Petitioner-appellant, vs. William H. Christison, Trustee of the Bankruptcy Estate of Edward John Kazubowski, Honorable Stephen J. Covey, Referee In Bankruptcy, United States District Court For the Southern District of Illinois, Northern Division, and The United States of America, Respondents-appellees.

No. 74-1062 is appeal from District Judge's order affirming Referee's order dated January 15, 1973, denying petition for removal of trustee.

No. 74-1063 is appeal from District Judge's order affirming Referee's order dated January 26, 1973, suppressing petitioner's objections to proceedings preceding sale of real estate (on December

12, 1972).

No. 74-1061 is appeal from District Judge's order affirming Referee's order dated February 16, 1973, ordering petitioner to vacate premises and turnover exclusive possession to TRUSTEE.

The appellees filed no briefs, nor was any brief filed on behalf of the REFEREE IN BANKRUPTCY.

Petitioner is a sister of the bankrupt, a creditor of the bankrupt's estate, was a tenant in possession of the real estate described in Schedule B-1 of the petition in bankruptcy and an attorney at law.

The bankrupt, Edward John Kazubowski, is a dentist, having constructed his dental office and residence in the City of Kewanee, Henry County, Illinois, upon return from World War II, with Honorable Discharge, and prior to any marriage to Betty Dolar. After the marriage, Edward John Kazubowski transferred said real estate in joint tenancy with Betty Dolar Kazubowski.

The real estate involved in this bankruptcy proceedings consists of the dental office and resi-

dence.

The financial destruction of Edward John Kazubowski, now the bankrupt, was not caused by a lack of professional skill, but rather by a series of acts and proceedings in repeated and continuous violations and defiance of a total of \$50,000.00 supersedeas and additional supersedeas appeal bonds by the ex-wife, Betty Dolar, in the Circuit Court of Henry County, 14th Judicial Circuit of Illinois, in Cause No. 65-D-1240, In Chancery, titled: Betty Dolar Kazubowski, plaintiff, vs. Edward John Kazubowski, defendant, and by the transfer and conveyance by the ex-wife of her joint tenancy interest in the said real estate to the secretary of one of her attorneys, and the immediate reconveyance of the same described real estate by the secretary of Attorney Gregg A. Young to Betty Dolar, and, without a remedy for relief in the courts of Illinois or heretofore in the Federal Courts. (R. Obj. pp. 33-34; 45 and Exh. 10 attached thereto, at pp. 100-104, and Exh. 2, being the Pet. of Bankruptcy, at pp. 60-65; in Appeal No. 74-1063).

Some relevant facts of the state court proceedings are necessary for an understanding of the posture of the case and for the filing of the petition in bankruptcy.

The final, divisible decree of divorce awarded to Betty Dolar Kazubowski from Edward John Kazubowski on June 13, 1966 in said cause No. 65-D-1240 in the said Circuit Court of Henry County, Illinois, retained jurisdiction for "further determination of the matter of partition, permanent alimony, allowance of attorney's fees and for such further matters as may be properly and lawfully considered to terminate this cause". (R. at pp. 109-110, in Appeal No. 74-1063).

Thereafter, on August 31, 1966, the ex-wife procured a property settlement decree without notice to Edward John Kazubowski, and without opportunity at any time thereafter to be heard and to defend his property or liberty.

The sole basis for the property settlement decree was an unauthorized document entitled "stipulation," signed by "Perona & Perona, attorneys for

Edward John Kazubowski, defendant".

By the "Stipulation" the ex-wife was to make an immediate conveyance of her joint tenancy in the real estate described therein to Edward John Kazubowski.

By the terms of the property settlement decree of August 31, 1966, filed in said cause No. 65-D-1240 in the said Circuit Court of Henry County, Illinois, the "Stipulation" was approved, adopted and incorporated in the property settlement decree, but materially altered the conditions in that the divorced Betty Dolar a/k/a Betty Dolar Kazubowski, was ordered to retain her joint tenancy interest in the said described real estate as security only for the payment of the sum provided in the "stipulation", to-wit: \$20,500.00, and \$5,000.00 of which said total sum was in lieu of and in full satisfaction of all rights to alimony that the divorced Betty Dolar may have. (R. Obj. pp.30-32; 45, and Exh. No. 10 attached thereto at pp. 111-115; in appeal No. 74-1063).

Upon appeal from the property settlement de-

cree of August 31, 1966, Kazubowski was ordered to present a \$25,000.00 appeal bond, within 5 days, for approval of the court. Appeal from the final decree of divorce was not permitted for the reason the time had passed.

The \$25,000.00 appeal bond was presented, approved and filed as supersedeas in said cause No. 65-D-1240.

The ex-wife thereafter procured an order for alimony and attorney's fees.

Upon appeal from the supplemental and additional ~~and additional~~ order for alimony and attorney's fees, Kazubowski was ordered to file, for approval, an additional \$5,000.00 appeal bond to act as additional supersedeas. The additional \$5,000.00 appeal bond was approved as additional supersedeas.

The ex-wife and her attorneys continued proceedings in repeated and continuous violations and defiance of the supersedeas and additional supersedeas appeal bonds, procuring orders for additional alimony, attorneys' fees and orders for commit-

ments of Kazubowski.

Kazubowski was then ordered to file additional \$20,000.00 appeal bond.

Four days thereafter, on October 28, 1968, the ex-wife conveyed her joint tenancy interest described in the said property settlement decree to the secretary of one of her attorneys, and the secretary of Attorney Gregg A. Young made an immediate reconveyance of the same described real estate to Betty Dolar.

(R. Pet. For Review pp5, 43-54; 47-51, Exh."D" attached thereto, pp. 60-72, being the Pet. of Bankruptcy; pp. 83-93 being the Answer of the Bankrupt to Trustee's petition, and Exh. "E" attached thereto, pp. 75-77, being the property settlement decree, in appeal No. 74-1061). (Also R. Obj. pp.34 and Exh. No. 2 attached thereto, being the Pet. of Bankruptcy at pp. 60, 65 in appeal No. 74-1063).

Thereafter, the ex-wife alleged an undivided one-half interest in the said real estate.

Thereafter, the ex-wife alleged a "Lien of decree of August 31, 1966" .

The ex-wife commenced a separate action in the

said Circuit Court of Henry County, Illinois, against three of the living co-sureties on the \$50,000.00 supersedeas and additional supersedeas appeal bonds, alleging \$50,000.00 due and owing under said bonds.¹ An order for summary judgment with award of execution was procured by ex-wife upon pleadings only. (R. Obj. p. 45 and Exh.No. 2 attached thereto, at pages 59-60; 62-63, being the ret. of Bankruptcy, in Appeal No. 74-1063).

The accounts of the said co-sureties-defendants were attached and garnisheed by ex-wife, and, ex-wife filed a judgment against the real estate of co-sureties Clarence W. Boling and Helen L. Boling.

Upon appeal, the said 3 co-sureties-defendants were forced to give additional \$40,000.00 in appeal bonds to act as supersedeas. Upon approval of \$40,000.00 appeal bonds as supersedeas, the accounts of said co-sureties-defendants were ordered to remain attached and garnisheed and the judgment on real estate of Bolings could not be released.

No remedy for relief was afforded said co-sureties

¹Betty Dolar Kazubowski, plaintiff, vs. Kelly Gilio (then deceased), Margaret Gilio, Clarence w. Boling and Helen L. Boling, defendants, No. 69-L-136, Circuit Court of Henry County, 14th Judicial Circuit of Illinois

in the courts of Illinois. (R. Obj. pp.34 and Exh. 10 attached thereto, at pp. 104-105 in No. 74-1063).

Monies in excess of the requirements specified in the said property settlement decree had been extracted, seized and confiscated by the ex-wife from Kazubowski, from petitioner, from Mary Kazubowski, mother of Edward John Kazubowski, and from the co-sureties, Margaret Gilio, Clarence W. Boling and Helen L. Boling.

The ex-wife procured an order prohibiting Kazubowski from filing any pleadings, documents or papers unless pertaining to appeals, and then continued to proceed against Kazubowski for payments of money as and for alleged non-payment under the property settlement decree, alimony and attorneys' fees. (R. Obj. pp. 34, 41,45, Exh. 6 Attached thereto at p. 78, Exh. 10 attached thereto at pp. 100-105 in appeal No. 74-1063).

The ex-wife then procured a groundless search warrant for the person of Kazubowski, at the address of his home, without probable cause, without a charge of an offense, and with a refusal to inform

Kazubowski of the charges for which the search warrant issued -- and without a hearing.

By connivance of the search warrant, consecutive sentences of 8 months were imposed upon Kazubowski unless petitioner and Mary Kazubowski, mother of Edward John Kazubowski, pay \$28,000.00 for purchase of his liberty, as and for alleged non-payment under the property settlement decree, alleged additional alimony and alleged additional attorneys' fees. (R. Obj. pp. 34, 45 and Exh. No. 10 attached thereto, at p. 100 - in No. 74-1063).

At the time of filing of the petition of bankruptcy, Kazubowski had been serving consecutive sentences of eight (8) months, in maximum security, in the Henry County Jail, since June 29, 1971.

BANKRUPTCY PROCEEDINGS:

Petitioner and Mary Kazubowski were induced by ATTORNEY CHARLES A. COVEY, and brother of the REFEREE IN BANKRUPTCY, STEPHEN J. COVEY, to pay \$155.00 to him for preparation and filing of a voluntary petition in bankruptcy for Edward John Kazubowski to obtain the relief in the federal court theretofore at

all times denied Kazubowski in the state courts, and as to recover assets belonging to the bankrupt's estate, and to have determinations made as to the dischargeability of debt under the property settlement decree of August 31, 1966, and under the supersedeas and additional supersedeas appeal bonds. (R. Obj. pp. 28-54; 55-124, being Exhibits No. 1 through and including No. 11, attached thereto, and included and attached to the Pet. for Review, being pp. 132-145 and Exh. B at pp. 147-243 of the Record in No. 74-1063), and (R. Pet. for Review pp. 39-95; Motion to Remit to Referee, pp. 9-19 - in No. 74-1061).

On December 3, 1971, Attorney Charles A. Covey filed the petition in bankruptcy.

On December 6, 1971, the REFEREE IN BANKRUPTCY appointed WILLIAM H. CHRISTISON as RECEIVER of the bankrupt's estate. The RECEIVER nominated himself as attorney for himself in his capacity as RECEIVER.

On December 21, 1971, the bankrupt was brought to the bankruptcy court by the sheriff and deputy sheriff of Henry County, Illinois, for the First Meeting of Creditors.

The REFEREE conducted a limited examination of the bankrupt, to the exclusion of petitioner as well as to other bona fide creditors, suppressing the true cause of the financial destruction of the bankrupt. (Obj. pp. 35, 45, Exh. 10 attached thereto at pp. 100-108 in No. 74-1063).

After the limited examination of the bankrupt, the REFEREE appointed WILLIAM H. CHRISTISON, as TRUSTEE of the Bankruptcy estate.

The said TRUSTEE appointed himself as ATTORNEY for himself in his capacity as TRUSTEE.

WILLIAM H. CHRISTISON, as RECEIVER, filed no report of his duties.²

WILLIAM H. CHRISTISON, as TRUSTEE, refused, failed and neglected immediately upon entering his duties to prepare a complete inventory of all the property of the bankrupt that comes into his possession setting forth whether the bankrupt's title to a piece of property is clear or merely in equity subject to encumbrances, the amounts thereof, and priority thereof, as required by Order 17(1) of

² Examination of the records reveals that on April 26, 1974, after docketing of petitioner's briefs in the court below, William H. Christison filed a Final Report as RECEIVER; para. 3 therein states: "That he hired H.S. Beeney Auction Sales to make an Inventory

the General Orders in Bankruptcy. (No. 74-1061, R. Pet. for Rev. pp.40-43); (No. 74-1062, R. Pet. for Rev. p. 156); (No. 74-1063, R. Obj. p. 49, Exh. 9 attached thereto at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

The REFEREE IN BANKRUPTCY refused, failed and neglected to appoint an appraiser, or appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof, as required by Section 70 f of the Act (11 U.S.C.A. § 110(f)).³ (No. 74-1061, R. Pet. for Rev. p. 42); (No. 74-1062, R. Pet. for Rev. p. 156); (No. 74-1063, R. Obj. p.49; Exh. 9 attached thereto at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

The said TRUSTEE, refused, failed and neglected to petition the court to appoint a duly qualified appraiser, or appraisers, in this bankruptcy estate pursuant to the requirements in Section 70 f of the Act (11 U.S.C.A. § 110(f)). (No. 74-1061, R. Pet.

and appraisal of the real estate and personal property of the bankrupt and your receiver filed the same."

³ Each of the 3 orders of the District Judge were

for Rev. pp. 40-43); (No. 74-1063, R. Obj. p. 49, Exh. No. 9 attached thereto at pp. 88-89; Exh. 10 attached thereto, at pp. 116-121); (No. 74-1062, R. Pet. for Rev. pp. 156-157).

The TRUSTEE refused, failed and neglected to make report to the court, within five days after receiving notice of his appointment of the articles set off to the bankrupt, according to the provisions of section 47 of the Act, with the estimated value of each article, so that petitioner, as well as other bonafide creditors, or the bankrupt, may file objections to the determination of the trustee within ten days after the filing of the report as provided in Order 17(2) of the General Orders in Bankruptcy. (In No. 74-1061 - R. Pet. for Rev. pp. 40-43); (In No. 74-1062 - R. Pet. for Rev. p. 159); (In No. 74-1063 -R. Obj. 49; Exh. No. 9 attached thereto at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

The TRUSTEE refused, failed and neglected to examine the bankrupt at the First Meeting of Creditors or at any other meeting specially fixed for

entered on December 4, 1973, Nunc Pro Tunc May 2, 1973 and prior to the Bankruptcy Rules and Official Forms, Effective October 1, 1973.

that purpose, pursuant to Section 47a(7)(a), (11 U.S.C.A. § 75(a)7(a)). (No. 74-1061 -R. ret. for Rev. pp.40-43); (No. 74-1062 -R. Pet. for Rev. pp. 156-157); (No. 74-1063 - R. Obj. p. 49; Exh. No. 9 attached thereto, at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

The TRUSTEE refused, failed and neglected to report to the court in writing the condition of the estate, the amount of money on hand within the first month after his appointment and every two months thereafter as required by Section 47 a(12) of the Act (11 U.S.C.A. § 75(a)(12)). (No. 74-1061, R. Pet. for Rev. pp.40-43); (No. 74-1062, R. Pet. for Rev. p. 156); (No. 74-1063, R. Obj. p. 49; Exh. No. 9 attached thereto, at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

SALE OF AUTOMOBILE

On March 27, 1972, the said TRUSTEE sold the 1963 Lincoln Continental automobile of the bankrupt at public auction in Peoria, Illinois, "free and clear of all liens, claims and encumbrances, with said liens, claims and encumbrances to attach to the proceeds of the sale" for a purchase^{PRICE}/of \$600.00

but without ever disclosing the name of the purchaser.

On May 16, 1972, the said TRUSTEE re-sold the same 1963 Lincoln Continental automobile of the bankrupt at public auction in Peoria, Illinois, for a purchase price of \$300.00 or 50%less than the purchase price represented at public auction on March 27, 1972. (No. 74-1061 - Pet. for Rev. pp.51-52;91); (No. 74-1062 - R. ret. for Rev. pp. 159-161); (No. 74-1063- R. Obj. pp. 41 and Exh. 6 attached thereto, at p. 81).

The TRUSTEE refused, failed and neglected to object to the created \$25,000.00 claim and petition for nondischargeability of debt filed February 7, 1972 by JULIA CHINLUND, EXECUTOR OF THE ESTATE OF JOHN J. ANGIELCZYK, deceased,(a co-surety on supersedesas bonds of Kazubowski), alleging \$25,000.00 due the estate under the property settlement decree of August 31, 1966; said claim was not made and filed in accord with requirements of Section⁵⁷ a and b of the Act for making and filing proof of claim. (No. 74-1061 - R. ret. For Rev. pp. 40-43) (No. 74-1062 R. Pet. for Rev. pp. 161-163) (No. 74-1063- R. Obj.

p. 49; Exh. 9 attached thereto, at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

The TRUSTEE did not object to the piece of paper filed February 7, 1972 by Betty Dolar and her attorneys, titled: "Application for a Determination of Certain Debt", but without ever having listed any specific debt, and with a prayer "...to render an Order that these debts are not dischargeable in the within Bankruptcy proceedings. . ." (No. 74-1061 - R. Pet. for Rev. pp. 40-43); (No. 74-1062 - R. Pet. for Rev. pp. 161-163); (No. 74-1063 - R. Obj. p. 49; Exh. 9 attached thereto, at pp. 88-89; Exh. 10 attached thereto at pp. 116-121).

An Order of Discharge in Bankruptcy was entered on February 8, 1972.

On February 23, 1972, after release from incarceration of more than seven and one-half (7½) months maximum security, in the County Jail, the bankrupt discharged ATTORNEY CHARLES A. COVEY, who refused to file any pleadings for bankrupt. (No. 74-1063 - p. 36 and Exh. 10 attached thereto at pp. 107-108).

After discharge of Attorney Charles A. Covey, petitioner assisted bankrupt in preparation of the Answer to the claim and petition of the said Executor, JULIA CHINLUND.

On April 27, 1972, neither the said EXECUTOR, JULIA CHINLUND, nor any of her attorneys, appeared for the hearing to make proof of the created claim of \$25,000.00, or any part thereof. The REFEREE refused bankrupt a hearing, and refused to reject or to dismiss the said created claim.

The TRUSTEE refused to file objections to the said created claim. The REFEREE refused to report the created claim to the U.S. Attorney. (No. 74-1061 R. Pet. for Rev. at p. 11); (No. 74-1062 - R. Pet. for Rev. pp. 161-164); (No. 74-1063 - R. Obj. p. 38).

On May 8, 1972, Margaret Gilio, creditor and a co-surety on the supersedeas and additional supersedeas appeal bonds, filed a PETITION FOR REMOVAL OF TRUSTEE, WILLIAM H. CHRISTISON.

On May 8, 1972, Clarence W. Boling and Helen L. Boling, creditors and co-sureties on the super-

secedas and additional supersedeas appeal bonds, filed a PETITION FOR REMOVAL OF TRUSTEE, WILLIAM H. CHRISTISON.

On May 10, 1972, the bankrupt filed a PETITION FOR REMOVAL OF TRUSTEE, WILLIAM H. CHRISTISON.⁴

No hearings have ever been set on said petitions, nor has any date for hearing ever been set.

On April 12, 1972, petitioner received a copy of NOTICE OF HEARING set for May 15, 1972, on the TRUSTEE's PETITION FOR SALE OF REAL ESTATE, CERTAIN HOUSEHOLD GOODS AND DENTISTRY.

Bankrupt had thereto fore received a copy of TRUSTEE'S said petition, and Bankrupt filed an Answer to the TRUSTEE's said petition.

On May 15, 1972, the REFEREE refused to hold any hearing on the TRUSTEE's said petition or on the Answer of the bankrupt thereto.

On May 18, 1972, the REFEREE entered a sua sponte order falsely reciting a "HEARING" on the petition of the said TRUSTEE and ordered the TRUSTEE to sell at public auction the real estate described

⁴ Petitioner assisted bankrupt in preparation of applications for dischargeability of debt under the property settlement decree and for dischargeability of debt, or liability, on the supersedeas and additional supersedeas appeal bonds, filed in this estate.

in Schedule B-1 of the petition in bankruptcy, "said sale to be made free and clear of all liens, claims and encumbrances, with said liens, claims and encumbrances to attach to the proceeds of the sale", and ordered further as follows:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BETTY DOLAR KAZUBOWSKI execute a quit claim deed conveying her interest in the said real estate to WILLIAM H. CHRISTISON, Trustee of the above bankruptcy estate."

(In 74-1061, R. Pet. for Rev. pp.48-49 and Exh."J" attached thereto at pp. 85-86, being the sua sponte order of Referee issued May 18, 1972).

Bankrupt filed Petition for Review from the REFEREE's sua sponte order of May 18, 1972 and paid the filing fees. No hearing has ever been set.

On June 6, 1972, BETTY DOLAR filed a claim alleging \$37,313.61 having been "paid" to her and that the balance remaining unpaid is \$50,330.98; and "claims an interest in the proceeds of the stock, and, claims an interest in the proceeds of the real estate to be sold by the Trustee", said interest being in the nature of a second lien as security for payments of money under an order of August 31,

1966.

The TRUSTEE did not file objections to the improper claim.⁵

On July 24, 1972, the district judge issued a sua sponte order **SUMMARILY STRIKING PETITIONER'S NAME FROM THE ROLL OF ATTORNEYS.**

On November 23, 1972, petitioner was served with NOTICE OF PUBLIC AUCTION on December 12, 1972 of the real estate "free and clear of all liens, claims and encumbrances, with said liens, claims and encumbrances to attach to the proceeds of the sale".

On December 12, 1972, the TRUSTEE, his auctioneers, the U.S. Marshal and two deputy U.S. Marshals appeared within the premises and sold the real estate. The TRUSTEE stopped the bidding at \$14,500.00 saying the sum of \$14,500.00 was in excess of 75% of the appraised value.

Petitioner filed OBJECTIONS TO TRUSTEE'S REPORT OF AUCTION SALE AND OBJECTIONS TO TRUSTEE'S PETITION FOR CONFIRMATION OF SALE OF REAL ESTATE AND OBJECTIONS

⁵ Monies and other properties extracted, seized and confiscated by Betty Dolar from bankrupt, from petitioner and other member of bankrupt's family and from co-sureties, Gilio and Bolings exceeded \$105,000.00 under property settlement decree, for alimony and attorneys' fees.

TO THE PROCEEDINGS PRECEDING THE SALE OF REAL ESTATE.

On January 26, 1973, REFEREE issued an order reciting in part: (APP. M);

"IT IS ORDERED, ADJUDGED AND DECREED that said petition to confirm sale of real estate is hereby denied because of the inadequate purchase price in the amount of \$14,500.00, which is less than 75% of the appraised value of said real estate and because the Trustee did not have exclusive possession of said real estate."

Petitioner's petition for review clearly states that said petition for review is "from that part of petitioner's OBJECTIONS TO THE PROCEEDINGS PRECEDING SALE OF REAL ESTATE", denied, concealed and suppressed by the said REFEREE. (R. Pet, for Rev. R. 132 in No. 74-1063).

The certificate of review presents one question: "Whether this Court was correct in refusing to confirm the sale of real estate because the price was inadequate."

None of petitioner's questions were presented for review by REFEREE.

On December 26, 1972, at 10:00 A.M. there was a hearing on Petitioner's PETITION FOR REMOVAL OF TRUSTEE.

With respect to a "complete inventory" filed

in this estate, the transcript of proceedings show the following: (No. 74-1062, R. Trans. p. 51):⁶

Petitioner: "Well, have you, Mr. Christison, at any time made a report or a determination of which claims have priority, which claims are secured, the amounts and their validity?"

Trustee: "Not yet. There has been no reason to do it at this stage."

Petitioner: "But you have sold the real estate of the bankrupt, is that correct - - -"

Trustee: "That's right."

Petitioner: " - - - without determining what interest the bankrupt has in the property?"

Trustee: "I don't understand your question."

Petitioner: "well, in other words, Mr. Christison, have you made a complete inventory of the assets of the bankrupt's estate?"

Trustee: "An inventory has been filed, yes."

Petitioner: "Now by 'an inventory' you mean the inventory and appraisal that was made by one Joseph Ford?"

Trustee: "That's correct."

With respect to the supersedeas and additional supersedeas appeal bonds in the courts of Illinois

⁶ Petitioner having paid in advance for transcript as requested by reporter, did not have opportunity to check for omissions, deletions, errors, corrections or alterations.

and the violations of said supersedeas and additional supersedeas bonds of the bankrupt which continued by the ex-wife after filing of the petition of bankruptcy, the following question and answer are shown in the transcript of proceedings at p. 68:

Petitioner: "And you have not taken an action to obtain an injunction in the State Court from further proceedings in violation of Dr. Kazubowski's bonds?"

Trustee: "I have not as yet."

With respect to question asked of said TRUSTEE as to what bills TRUSTEE paid, the TRUSTEE testified "I don't know." (R. Trans. pp.110-111).

At page 113 of said transcript of proceedings, petitioner asked the following questions of TRUSTEE:

"Q. Do you have any figures with you at this time so that I could be informed of what the status of the estate is?"

"A. No, but the Referee has instructed me to file an interim status report, which I will do."

"Q. That has only been since today?"

"A. This morning."

The order denying petition for removal of TRUSTEE was entered on January 15, 1973 (R. p. 37) (Appeal No. 74-1062). (APP.L)

On January 19, 1973, the TRUSTEE filed an Interim Report merely showing Receipts of \$4,618.00 and Disbursements of \$523.88.

Petition for Review of Referee's Order dated January 15, 1973 was filed January 24, 1973. The Certificate of Review prepared by REFEREE presents one question:

"Whether your Referee errored in denying the petition for removal of trustee."

None of petitioner's questions were presented by the said REFEREE.

On February 16, 1973, the REFEREE IN BANKRUPTCY issued a sua sponte order, ordering petitioner and tenant in possession to vacate the premises and to turnover possession to the TRUSTEE, WILLIAM H. CHRISTISON, on or before March 12, 1973. (APP. N).

On February 26, 1973, petitioner filed petition for review from sua sponte order of REFEREE dated February 16, 1973.

The Certificate of review prepared by the said REFEREE presents one question:

"The issue presented for review is whether your Referee was correct in ordering the bankrupt, his sister and his mother to vacate the real estate

in question and turnover possession to the trustee."

None of petitioner's questions were presented by the said REFEREE.

Petitioner filed her respective Motions to Remit each of the 3 Certificates of Review to the REFEREE for preparation and certification of review pursuant to Sec. 39a(8) of the Act (11 U.S.C.A. §67(a) (8), and for other relief.

Notice of HEARING on Certificates of Review, set for May 2, 1973, was served by clerk of said District Court.

On May 2, 1973, in effect there was "No Hearing". Petitioner was the only party present. Petitioner was informed by the district judge that if petitioner didn't like the decisions of the judge, she could appeal. The District Judge denied petitioner's motions to remit certificates of review to Referee for preparation pursuant to Sec. 39 (a)(8) of the Act, and affirmed REFEREE'S Orders of January 15, 1973, January 26, 1973 and February 16, 1973, with a refusal to set forth said orders upon a separate document, or upon 3 separate documents.

Original action in the Court of Appeals , for

writ of mandamus to compel district judge to exercise judicial duty as required of him was a useless act, in that the said court of appeals took no action, but waited until after the district judge, on December 4, 1973, issued three (3) signed orders, Nunc pro Tunc May 2, 1973, affirming REFEREE'S orders of January 15, (APP. I, J. & K) 1973, January 26, 1973 and February 16, 1973, and thereafter issued an order dismissing the action for mandamus because it had become "MOOT".

On May 31, 1973, petitioner filed three (3) Notices of Appeal to the United States Court of Appeals For the Seventh Circuit with the clerk of the said district court from the oral orders or announcements on May 2, 1973, conditioned upon the district judge setting forth his oral orders upon a separate document or three separate documents, with bonds for cost upon appeals.

Petitioner's Briefs and Argument (appellant below) in each of the three (3) said appeals were docketed on February 26, 1974.

On May 21, 1974, the Court of Appeals issued an order "that these three appeals be submitted to the court for decision without oral argument and

without the filing of respondents-appellees' briefs.

On July 9, 1974, the court of appeals issued an order in appeal No. 74-1061 and No. 74-1063, ordering petitioner (appellant below) to respond within thirty (30) days as to why the appeal should not be dismissed for lack of prosecution.

There was no "hearing" in the court of appeals and no petition for "rehearing" was filed.

The judgment of the district court and the REFEREE in each case, is affirmed by the Judgment and opinion of the United States Court of Appeals For the Seventh Circuit, issued on August 22, 1977.

REASONS FOR GRANTING THE WRIT

THE JUDGMENT AND OPINION OF THE SEVENTH CIRCUIT COURT OF APPEALS WAS ENTERED WITHOUT JURISDICTION OR EXCEEDED THE JURISDICTION CONFERRED UPON THE BANKRUPTCY COURT IN THAT THE SAID JUDGMENT AND OPINION ESTABLISHES ON ITS FACE THAT NO COMPLETE INVENTORY OF ALL THE PROPERTY OF THE BANKRUPT HAS EVER BEEN PREPARED BY WILLIAM H. CHRISTISON, EITHER AS RECEIVER OF THE BANKRUPT'S ESTATE OR AS TRUSTEE OF THE BANKRUPT'S ESTATE AS REQUIRED OF HIM PURSUANT TO THE PROVISIONS AS UNEQUIVOCALLY WRITTEN IN ORDER 17(1) OF THE GENERAL ORDERS IN BANKRUPTCY, AND, FURTHER ESTABLISHES ON ITS FACE THAT NO APPRAISER, OR APPRAISERS, HAVE EVER DULY BEEN APPOINTED BY THE COURT IN THIS ESTATE AS UNEQUIVOCALLY REQUIRED PURSUANT TO SECTION 70 sub. f OF THE ACT (11 U.S.C.A. §110(f)) AND THE PROCURING OF THE ADMINISTRATION OF THIS ESTATE AND THE CONTINUED PROCURING OF A CORRUPT ADMINISTERING OF THIS ESTATE WAS BY THE CALCULATED OMISSIONS OF STATUTORY DUTIES IMPOSED UPON THE SAID TRUSTEE UNDER ORDER 17(1) AND (2) OF THE GENERAL ORDERS IN BANKRUPTCY, SECTION 47 OF THE ACT (11 U.S.C.A. §75) and SECTION 70 f OF THE ACT (11 U.S.C.A. §110(f)), AND BY OVERT ACTS OF MISCONDUCT OF THE SAID TRUSTEE, REPUGNANT TO, INCONSISTENT WITH AND CONTRARY TO THE BANKRUPTCY LAW AND THE STATUTORY DUTIES IMPOSED UPON THE OFFICE OF TRUST OF THE SAID TRUSTEE, RENDERING THE SAID JUDGMENT AND OPINION A WILFUL TRANSGRESSION OF ARTICLE VI, CLAUSE 2 OF THE UNITED STATES CONSTITUTION, NECESSARILY INVOLVING DEPRIVATIONS OF PETITIONER'S FIRST, FIFTH AND FOURTEENTH AMENDMENT FEDERAL CONSTITUTIONAL RIGHTS AND A GRAVE INJUSTICE TO PETITIONER, AS WELL AS TO OTHER BONAFAIDE CREDITORS, AND AS WELL AS TO THE BANKRUPT.

In Appeal No. 74-1061 petitioner presented

six (6) issues for judicial review.

In appeal No. 74-1062 petitioner presented four (4) issues for judicial review.

In appeal No. 74-1063 petitioner presented six (6) issues for judicial review.

Each of the appeals raise the issues of the calculated omissions of statutory duties imposed upon the said TRUSTEE pursuant to Order 17(1) and (2) of the General Orders in Bankruptcy, Section 70 f of the Act, Section 47 of the Act, and the overt acts of misconduct of the said TRUSTEE inconsistent with, contrary to and repugnant to the statutory provisions of the Act and the procuring of orders, for sale and re-sale of bankrupt's property, without hearings but with a recital of "a hearing" and, the REFEREE'S excess of power or acts outside the scope of the powers conferred upon the bankruptcy court.

The opinion of the Seventh Circuit clearly establishes on page 2 of said opinion as follows:

"An exhaustive inventory and appraisal of Kazubowski's real estate, including a dwelling, and personal property was conducted by a local firm licensed as a real estate broker and appraiser, and forwarded to the receiver."

Again, on page 5 of the said opinion, the said Court of Appeals said:

"The recurring claim that a complete inventory or correct appraisal of the bankrupt's property was never filed is demonstrably false. A thorough inventory and appraisal performed by a licensed real estate broker and appraiser is part of the record."

One of the first affirmative duties of a TRUSTEE upon his appointment and qualification is to "prepare a complete inventory of all the property of the bankrupt" that comes into his possession as unequivocally written under General Order 17(1). In complying with this statutory duty he is aided by the appraisal which the Act seems to require in every case where the bankrupt has any property, irrespective of the type and of the value of the assets in question, as unequivocally written in Section 70 f of the Act.

In every case where there are assets to be appraised, at least one appraiser must be appointed according to the plain implication of the Act. Collier on Bankruptcy, 14th Edition, Vol. 4 A, pp. 1120-1121 (1967).

It is for the court to provide an appraiser

upon his appointment with the instructions necessary to secure valuable assistance at a minimum of expense to the estate. These instructions are clearly in the Official Form to be used for the appraiser's appointment. Official Form No. 12 provides for the appointment and oath of appraiser. Collier on Bankruptcy, 14th Edition, Vol. 4 A, pp. 1122-1123 (1967).

The appraiser is appointed not by the TRUSTEE or by the creditors (some of whom may possibly seek a low, others a high appraisal), but by the court as provided under Section 70 f. The order or appointment and the oath of the appraiser should conform to Official Form No. 12. Collier on Bankruptcy, Vol. 4 A, pp. 1125-1126 (1967).

WILLIAM H. CHRISTISON, as RECEIVER of the bankrupt's estate and attorney for himself as RECEIVER, and thereafter as TRUSTEE of the bankrupt's estate and attorney for himself as TRUSTEE, refused, failed and neglected to prepare a complete inventory of all the property of the bankrupt, and as shown on the PETITION OF BANKRUPTCY, filed December 3, 1971, and has never set forth whether the bankrupt's title to

a piece of property is clear or merely in equity subject to liens, claims or encumbrances, the amounts thereof, validity thereof and priority thereof.

A complete inventory must, of course, set forth whether the bankrupt's title to a piece of property is clear or merely in equity subject to encumbrances, and Section 70 sub. f of the Act requires that the bankrupt's property be appraised and obviously a correct appraisal of the bankrupt's interest is impossible without knowing whether his title is encumbered.

Upon the refusal, failure and neglect of the REFEREE IN BANKRUPTCY to duly appoint an appraiser pursuant to the provisions of section 70 f of the Act, the said TRUSTEE had a duty to petition the court for an appointment of a duly qualified appraiser, or appraisers, as required by Official Form No. 12.

The said TRUSTEE having refused, failed and neglected to perform the statutory duties required of him under General order 17(1) and (2), and the REFEREE IN BANKRUPTCY having refused, failed and

neglected to duly appoint an appraiser, or appraisers, the said TRUSTEE then refused, failed and neglected to perform the statutory duties required of TRUSTEES pursuant to Section 47 of the Act.

, The said TRUSTEE having refused, failed and neglected to perform the statutory duties imposed upon his office of trust pursuant to General Order 17(1) and (2) and Section 47 of the Act, the said REFEREE refused, failed and neglected to remove the said TRUSTEE for cause as required under General Order 17(3) or Section 2a(17) of the act.

The said TRUSTEE, nonetheless, sold and re-sold at public auction the same personal and real property of the bankrupt "free and clear of all liens, claims and encumbrances with said liens, claims and encumbrances to attach to the proceeds of the sale", irrespective of a total of \$219,906.35 claims filed against the estate, \$111,194.61 of which were filed as secured claims, and with a refusal to object to the improper and created claims filed against the bankrupt's estate, and without disclosure of how at public auction the sale and re-sale of the same property/could

benefit the bankrupt's estate.

The opinion of the Seventh Circuit conceals and suppresses the refusal, failure and neglect of the said TRUSTEE to obtain injunction in the state court against the ex-wife from further proceedings on the supersedeas and additional supersedeas appeal bonds of the bankrupt, and his refusal, failure and neglect to examine the bankrupt as to bring out the truth of the financial destruction of the bankrupt, subjecting and caused to be subjected to indebtedness to petitioner, as well as to other bonafide creditors, who had monies and other properties extracted, seized and confiscated by the ex-wife as and for alleged non-payment under the property settlement decree of August 31, 1966, and as and for alleged additional alimony, and as and for alleged attorneys' fees.

The misconduct of the TRUSTEE, WILLIAM H. CHRISTISON, extends back to the outset of this bankruptcy proceedings. There has been no legitimate administering of this bankruptcy estate.

The adverse interests of the said TRUSTEE to

the bankrupt's estate is clearly evident by the refusal, failure and neglect of the said TRUSTEE to perform the statutory duties imposed upon TRUSTEES under General Order 17(1) and (2), Section 47 of the Act and Section 70 sub. f of the Act.

This Court in Mosser v. Darrow, 341 U.S. 267, 271 (1951) said:

"Equity tolerates in bankruptcy trustees no interest adverse to the trust. This is not because such interests are always corrupt, but because they are always corrupting."

The Seventh Circuit Court of Appeals withheld petitioner's three appeals, subjecting and caused to be subjected to preference of other appeals not entitled to preference over petitioner's said appeals, as to affirm the district judge and the REFEREE IN BANKRUPTCY in awarding the ex-wife and her attorneys a nondischargeable debt and judgment against the bankrupt, depriving petitioner, as well as other bonafide creditors, of the just share to be received from the bankrupt's estate.

The purpose and intent of the Bankruptcy Act has been defeated by the calculated omissions of

statutory duties imposed upon the said TRUSTEE under General order 17(1) and (2) and by the calculated omission of the REFEREE IN BANKRUPTCY to duly appoint an appraiser, or appraisers, pursuant to Section 70 sub. f of the Act.

The opinion and judgment of the Seventh Circuit is a wilful transgression of the "Laws of the United States". The federal courts have an obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuant thereof. Hobb v. Connolly, 111 U.S. 624, 637 (1884).

The wilful transgression of Article VI, Clause 2 of the National Constitution necessarily involves deprivations of petitioner's First, Fifth and Fourteenth Amendment Federal Constitutional rights.

It is submitted that Rule 19 recognizes the appropriateness of the grant of certiorari where the federal appellate decision has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a course by a lower court as to call for an exercise of this Court's power.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit Court of Appeals.

Respectfully submitted,

ANNA A. PHELPS
R.F.D. #4, So. Euclid Ave.
Princeton, Illinois 61356

PETITIONER PRO SE

(An Attorney at Law, admitted to the Roll of Attorneys in the United States District Court for the Southern District of Illinois on June 21, 1955)

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

**UNPUBLISHED ORDER
NOT TO BE CITED
PER CIRCUIT RULE 35**AUGUST 22, 1977

(Submitted July 6, 1977)

BeforeHon. PHILIP W. TONE, Circuit JudgeHon. WILLIAM J. BAUER, Circuit JudgeHon. WILLIAM J. CAMPBELL, Senior District Judge***In the Matter of:**EDWARD J. KAZUBOWSKI, BankruptANNA A. PHELPS,
Petitioner-Appellant,No.s. 74-1061, vs.
74-1062 & 74-1063WILLIAM H. CHRISTISON, TRUSTEE,
etc., et al.,
Respondents-Appellees.Appeal from the
United States District
Court for the
Southern District
of Illinois,
Northern Division
No. P-BK-71-782**ORDER**

Anna A. Phelps, a sister of the bankrupt Edward John Kazubowski and an unsecured creditor of his estate, has filed three separate appeals from orders entered by the referee in bankruptcy and the affirmance thereof by the district court. These three cases are consolidated on appeal due to the similarity of factual background and legal issues involved in each case. Appellee has filed no brief; therefore, these appeals are considered by this court solely on the record and the briefs of appellant, without oral argument, in accordance with Rule 2 of the Federal Rules of Appellate Procedure.

In essence, Phelps complains that the estate of her brother, of which she is an unsecured creditor, has been victimized

*Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

by the trustee through his alleged neglect of statutorily-imposed obligations, which Phelps asserts is tantamount to fraudulent administration, and by criminal complicity therein on the part of the referee in bankruptcy, the district court judge, and many others,^{1/} in violation of 18 U.S.C. § 371. The pertinent facts are as follows.

Kazubowski, upon the filing of a voluntary petition in bankruptcy, was adjudged a bankrupt on December 3, 1971. William H. Christison, appellee herein, was appointed receiver to the estate. An exhaustive inventory and appraisal of Kazubowski's real estate, including a dwelling, and personal property was conducted by a local firm licensed as a real estate broker and appraiser, and forwarded to the receiver. Shortly thereafter, Christison was appointed trustee of Kazubowski's estate by the referee on December 21, 1971.

The trustee sought, and received, authorization from the referee to sell, at public auction, Kazubowski's real estate for the benefit of his creditors. On November 21, 1972, a notice was sent to all creditors and other interested parties stating the date set for the sale of this property. The highest bid elicited during the public sale, \$14,500, was determined inadequate by the referee because it totalled less than 75 per cent of the \$21,000 appraised value of the real estate;^{2/} for

^{1/} Permeating Phelps' briefs is the argument that the trustee, the referee and the district court have conspired with the bankrupt's ex-wife and her attorneys to extract the remaining assets of the estate for their own benefit. Related to this contention is petitioner's claim that the bankruptcy court is the proper judicial entity to determine the validity of various property settlement decrees entered in the Illinois courts, claiming that the bankrupt has remained unable to obtain relief from the decrees in the state court. However, this question has been determined adversely to the bankrupt in state proceedings. Kazubowski v. Kazubowski, 93 Ill. App. 2d 126, 235 N.E. 2d 664 (1968), cert. denied, 393 U.S. 1117 (1969); Kazubowski v. Kazubowski, 45 Ill. 2d 405, 259 N.W. 2d 282, cert. denied, 400 U.S. 926 (1970). The bankrupt's dischargeability in bankruptcy from these obligations has not yet been determined; clearly, the bankruptcy court can afford no further relief.

^{2/} 11 U.S.C. § 110(f) provides in pertinent part:

The court shall appoint a competent and disinterested appraiser . . . who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value . . .

this reason, the referee refused to approve the sale. The trustee thereupon filed a petition requesting the removal of the bankrupt, his mother and Phelps from the premises. He asserted that the inadequate bids were a result of the continued presence of Kazubowski and his family, since the trustee could not guarantee immediate possession to the potential buyer. The referee held a hearing, of which Kazubowski received notice but failed to attend. Citing 11 U.S.C. § 110(a),^{3/} the referee entered an order requiring the bankrupt and his family to vacate the premises.

During this period, Phelps filed a petition requesting removal of the trustee, citing various alleged breaches of statutorily-imposed obligations as cause. A hearing, during which Phelps took full advantage of her opportunity to examine the trustee, disclosed in the view of the referee neither substantial nor material omissions or oversights on Christison's part. Accordingly, the referee entered an order dismissing the petition for removal.

Upon review by Judge Morgan, each of these orders was affirmed,^{4/} and Phelps appeals.

^{3/} This statute provides in pertinent part:

(a) The trustee of the estate of a bankrupt . . . upon his . . . appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title, except insofar as it is to property which is held to be exempt, to all the following kinds of property wherever located

* * * *

(5) property, including rights of action which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered.

The aforementioned property settlement decree awarded the property in question to the bankrupt, his ex-wife to hold an undivided one-half interest therein merely as security for the amounts owed to her. Pursuant to an order entered by the referee, she conveyed by quit-claim deed her legal interest in the property to the trustee prior to the sale.

^{4/} The procedural course of this litigation in the district court should be unraveled to the extent necessary to form a context for these appeals. The district court's denial of Phelps' motions for review in all three cases was delivered

(Footnote continued on following page.)

In No. 74-1061, Phelps asserts the invalidity of the referee's order requiring her and her family to vacate the bankrupt's premises. She maintains that as a "tenant in possession," she was entitled to notice of the hearing on the trustee's petition requesting vacation, and that denial of notice deprived her of due process. Further, she accuses the referee and trustee of conspiring, in violation of 18 U.S.C. § 371, to purloin the assets of Kazubowski's estate, and offers as evidence the referee's failure to order a complete inventory or correct appraisal of the estate. The ultimate relief requested in all three appeals is removal of the trustee and vacation of all orders entered in the bankruptcy proceeding.

In No. 74-1062, Phelps sets forth a justification for her suit to remove the trustee, citing his alleged breaches of statutory duty. For example, she contends that Christison's attempt to sell the property of the bankrupt without ascertaining "whether the bankrupt's title is clear or merely in equity subject to specific liens, claims and encumbrances" constitutes negligence. She does not detail any resultant harm to creditors.

In No. 74-1063, Phelps contends that the referee's order disapproving the sale of the property is invalid, apparently reasoning that no sale can occur due to her aforementioned objections.^{5/}

4/ (Continued)
orally. Phelps thereupon petitioned this court for a writ of mandamus compelling the judge to set forth upon separate documents his oral orders and announcements, in accordance with Rules 54(a) and 58 of the Federal Rules of Civil Procedure. Judge Morgan, however, filed the appropriate written orders *sua sponte*, leading this court to deny Phelps' petition on mootness grounds. (No. 73-1474, decided December 14, 1973.) Phelps sought review of the district court's affirmation of the referee's orders. Upon her motion this court ordered the district court to certify and transmit the record of the proceedings below and to docket instanter her appeals. (No. 73-1474, decided January 16, 1974.)

5/ A letter written by the referee to Judge Morgan reveals that the Kazubowski family did vacate the premises, and the property was sold at a satisfactory price. To the extent, however, that Phelps requests this court to vacate the allegedly invalid orders entered in these proceedings and remove the trustee, the claims set forth in Nos. 74-1061 and 74-1063 are not considered moot.

Jurisdiction is based upon 11 U.S.C. § 47(a), which authorizes courts of appeal to review interlocutory orders in "proceedings in bankruptcy," but not in "controversies arising in proceedings in bankruptcy." In effect, Phelps contests the manner in which this estate is being administered. Thus, the allegations underlying these appeals arise from "matters of an administrative character . . . which are presented in the ordinary course of the administration of the bankrupt's estate," United Kingdom Mutual Steamship Assurance Assoc. v. Linan, 418 F.2d 9, 10 (2d Cir. 1969) and involve proceedings in bankruptcy. Moore's Federal Practice § 110.19[5].

Regarding the claimed due process deprivation in No. 74-1061, Phelps fails to establish that she was entitled to prior notice of the hearing on the trustee's petition for turnover of possession of the bankrupt's property. Although she denominates herself a "tenant in possession," this phrase is bereft of legal significance in the absence of a showing that she retained a leasehold in the property or some legal interest which entitled her to contest the vesting of possession in the trustee. Since her sole legal interest in the property was in the role of unsecured creditor, Phelps was not a party in the turnover proceeding and thus was not entitled to notice. In any event, since Kazubowski was afforded due notice, it might be maintained that Phelps had constructive notice of the turnover action.

The recurring claim that a complete inventory or correct appraisal of the bankrupt's property was never filed is demonstrably false. A thorough inventory and appraisal performed by a licensed real estate broker and appraiser is part of the record. Since Phelps fails to detail any errors or inaccuracies in the existing report, its accuracy is presumed, and Christison was not required to file a redundant inventory. See Rule 218, revised Bankruptcy Rules.^{6/}

Given the priority of the referee's turnover order under 11 U.S.C. § 110(a), Phelps' conspiracy allegations are baseless. Cf. United States v. Nall, 437 F.2d 1177 (5th Cir. 1971).

6/ General Order 17, which Phelps relies upon was abrogated October 1, 1973. General Order 17(1) is replaced by Rule 218 of the revised Bankruptcy Rules. According to the Advisory Committee's Note, Rule 218(1) merely restates 17(1). Order 17(2) is incorporated in Rule 403(b).

Nos. 74-1061, 74-1062 and 74-1063

In No. 74-1062, Phelps complains of Christison's alleged breach of statutory duties and claims error in the denial of her petition for removal by the referee and the district court. Phelps raises two omissions: (1) Christison's failure to file an interim report as required by Rule 218; and (2) his attempt to sell the property without ascertaining the existence of liens and encumbrances.

After conducting a full hearing on Phelps' petition, which encompassed the matters raised in appellant's brief, the referee indicated his satisfaction with the trustee's handling of his duties. Although it is apparent that Christison was somewhat tardy in filing interim reports, this obligation has been satisfactorily discharged. No specific harm to any creditor is alleged.

Phelps relies on In re Prather, 138 F. Supp. 433 (S.D. Ill. 1956) in support of her theory that Christison contravened bankruptcy law in attempting to sell Kazubowski's property "free and clear of all liens, claims and encumbrances with said liens, claims and encumbrances to attach to the proceeds of the sale." However, Phelps misperceives the import of that case. In Prather, the court declared that the trustee had the duty of affirmatively ascertaining the existence of liens and encumbrances "in order to make certain he would notify all necessary parties." Id. at 435. The trustee in that case was adjudged negligent as a result of his failure to discover a lien of the Government on the property of the bankrupt before dissipating the proceeds of the sale. In this case, however, all creditors were notified of the sale. Lienors will be satisfied, to the extent possible, from the proceeds which the trustee holds for their benefit. Thus, no fraud or disregard of the trustee's fiduciary duty is evident in this method of sale. Cf. Marley v. United States, 381 F.2d 738 (Ct. Cl. 1967).

Since any omission or oversights of the trustee evident in his administration of this estate are insubstantial at best, the referee properly determined that no cause for removal existed.

In No. 74-1063, Phelps relies, *inter alia*, on Christison's dereliction in filing a report of the articles legally claimed by the bankrupt for exemption, as required by Rule 403(b). However, an affidavit filed by Kazubowski reveals that the trustee did file a report of exempt property. R. 121. Appellant's remaining claims concerning the invalidity of any attempt by the trustee to sell property to the bankrupt estate duplicate those discussed above.

Nos. 74-1061, 74-1062 and 74-1063

Appellant has failed to establish fraud, dereliction or mischief on the part of the trustee which would constitute cause for his removal. Thus, the relief requested by Phelps in each case must be denied. Cf. In re Freeport Italian Bakery 340 F.2d 50 (2d Cir. 1965); In re L. F. Grammes & Sons, Inc., 324 F.2d 675 (3d Cir. 1963); In re Woodmar Realty Co., 294 F.2d 785 (7th Cir. 1961), cert. denied, 369 U.S. 803 (1962).

In view of the failure of appellant to substantiate her claims of chicanery and shirking of statutory obligations on the part of the trustee, the judgment of the district court and the referee in each case is

AFFIRMED.

Unpublished Per Curiam Order

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

August 22 , 19 77

Before

Hon. PHILIP W. TONE, Circuit Judge

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. WILLIAM J. CAMPBELL, Senior District Judge*

IN THE MATTER OF: EDWARD J. KAZUBOWSKI,
BankruptANNA A. PHELPS,
Petitioner-Appellant,

74-1061, 74-1062

No. and 74-1063 vs.

WILLIAM H. CHRISTISON, Trustee, etc.,
et al.,
Respondents-Appellees.Appeals from the
United States
District Court
for the Southern
District of Illinois
Northern Division
No. 71 782 BK P
Robert D. Morgan, Judge.

These causes came on to be heard on the transcript of the record from the

United States District Court for the Southern
Illinois Northern Division.

District of

On consideration whereof, it is ordered and adjudged by this court that

the judgment of the said District Court in these causes appealed from be, and
the same is hereby, AFFIRMED, with costs, in accordance with the
order of this court entered this date.* Senior District Judge William J. Campbell of the Northern District
of Illinois is sitting by designation.**COURT OF APPEALS**
United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

APRIL 16, 19 74

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon.

Hon.

IN THE MATTER OF:

EDWARD J. KAZUBOWSKI

ANNA A. PHELPS, Petitioner-Appellant,

No. 74-1061 vs.
WILLIAM H. CHRISTISON, Trustee, etc.,
et al., Respondents-Appellees.Appeal from the
United States District
Court for the Southern
District of Illinois,
Northern Division.
(71 782 BK P)It appears to the Court that the appellants brief was
filed on February 26, 1974 , that the appellees brief was
due to be filed on or before March 28, 1974 and that
the appellee(s) has (have) failed to file a brief. On
consideration whereof;IT IS ORDERED that the parties to this appeal show cause
if any there be why this appeal should not be submitted to
the Court for decision, without the filing of a brief by the
appellee(s). Any request by an appellee for leave to file
a brief instanter or for an extension of time in which to
file a brief shall be accompanied by an affidavit showing
good cause to permit the late filing.Responses to this rule to show cause shall be filed with
the Clerk of this Court on or before May 1, 1974.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

APRIL 16, 1974

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. _____

Hon. _____

*A true copy
Date*

C. Kostick, Dep.

IN THE MATTER OF:

EDWARD J. KAZUBOWSKI, Bankrupt
ANNA A. PHELPS, Petitioner-Appellant,

No. 74-1062 vs.
WILLIAM H. CHRISTISON, Trustee, etc.,
et al., Respondents-Appellees.

Appeal from the
United States District
Court for the Southern
District of Illinois,
Northern Division.
(71 782 BK P)

It appears to the Court that the appellants brief was filed on February 26, 1974 , that the appellees brief was due to be filed on or before March 28, 1974 and that the appellee(s) has (have) failed to file a brief. On consideration whereof;

IT IS ORDERED that the parties to this appeal show cause if any there be why this appeal should not be submitted to the Court for decision, without the filing of a brief by the appellee(s). Any request by an appellee for leave to file a brief instanter or for an extension of time in which to file a brief shall be accompanied by an affidavit showing good cause to permit the late filing.

Responses to this rule to show cause shall be filed with the Clerk of this Court on or before May 1, 1974.

CERTIFIED United States Court of Appeals

For the Seventh Circuit true Copy
Date

Chicago, Illinois 60604

APRIL 16, 1974

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. _____

Hon. _____

E. Kostick, Dep.
Clerk of the United States
Court of Appeals for the
Seventh Circuit.

IN THE MATTER OF:

EDWARD J. KAZUBOWSKI, Bankrupt
ANNA A. PHELPS, Petitioner-Appellant,

No. 74-1063 vs.
WILLIAM H. CHRISTISON, Trustee, etc.,
et al., Respondents-Appellees.

Appeal from the
United States District
Court for the Southern
District of Illinois,
Northern Division.
(71 782 BK P)

It appears to the Court that the appellants brief was filed on February 26, 1974 , that the appellees brief was due to be filed on or before March 28, 1974 and that the appellee(s) has (have) failed to file a brief. On consideration whereof;

IT IS ORDERED that the parties to this appeal show cause if any there be why this appeal should not be submitted to the Court for decision, without the filing of a brief by the appellee(s). Any request by an appellee for leave to file a brief instanter or for an extension of time in which to file a brief shall be accompanied by an affidavit showing good cause to permit the late filing.

Responses to this rule to show cause shall be filed with the Clerk of this Court on or before May 1, 1974.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

MAY 21, 1974

Before

Hon. LUTHER M. SWYGERT, Chief Judge
 Hon. JOHN PAUL STEVENS, Circuit Judge
 Hon. ROBERT A. SPRECHER, Circuit Judge

IN THE MATTER OF:
EDWARD J. KAZUBOWSKI, Bankrupt
ANNA A. PHELPS, Petitioner-Appellant,
No. 74-1061, 74-1062 vs.
74-1063
WILLIAM H. CHRISTISON, Trustee, etc.,
et al., Respondents-Appellees.

Appeal from the
 United States District
 Court for the Southern
 District of Illinois,
 Northern Division.
 (71 782 BK P)

On April 16, 1974 this Court issued "Rules to Show Cause" on respondents-appellees why these appeals should not be taken under advisement without the filing of any brief on behalf of said appellees. Said Rules to Show Cause issued pursuant to Circuit Rule 26(c) and F.R.A.P. 31(c). On April 30, 1974 the petitioner-appellant Anna A. Phelps, filed separate objections to the issuance of this Court's Rules to Show Cause in each of the above-entitled appeals. On consideration of all the foregoing,

IT IS ORDERED that petitioner-appellant "Objections" and included motions be and the same are hereby DENIED.

IT IS FURTHER ORDERED, in light of the fact that no response has been filed by respondents-appellees to this Court's Rule to Show Cause, that these three appeals be submitted to the Court for decision without oral argument and without the filing of respondents-appellees' briefs.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

July 9, 1975

By the Court:

IN THE MATTER OF:
EDWARD J. KAZUBOWSKI, Bankrupt

ANNA A. PHELPS, Petitioner-Appellant,

No. 74-1061 vs.

WILLIAM H. CHRISTISON, Trustee, etc.,
et al., Respondents-Appellees.

} Appeal from the United
 States District Court
 for the Southern
 District of Illinois,
 Northern Division.
 No. 71 782 BK P

It has come to the attention of this Court that appellant has failed to file her appellant's brief within the required time, or to request that the time for filing her appellant's brief be extended pursuant to Circuit Rule 25. On consideration whereof,

IT IS ORDERED that appellant respond within thirty (30) days of the date of this order as to why her appeal should not be dismissed for lack of prosecution.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

July 9, 1975.

By the Court:

IN THE MATTER OF:
EDWARD J. KAZUBOWSKI, Bankrupt

| | | |
|--|------------------------|---|
| ANNA A. PHELPS, Petitioner-Appellant, No. 74-1063 | vs. | Appeal from the United States District Court for the Southern District of Illinois, Northern Division. No. 71 782 BK P |
| WILLIAM H. CHRISTISON, Trustee, etc., et al., | Respondents-Appellees. | |

It has come to the attention of this Court that appellant has failed to file her appellant's brief within the required time, or to request that the time for filing her appellant's brief be extended pursuant to Circuit Rule 25. On consideration whereof,

IT IS ORDERED that appellant respond within thirty (30) days of the date of this order as to why her appeal should not be dismissed for lack of prosecution.

FILED

IN THE UNITED STATES DISTRICT COURT DEC 4 1973
SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

IN THE MATTER OF
EDWARD JOHN KAZUBOWSKI,
Bankrupt.

O'Clock.....M
WILLIAM J. LITTELL, CLERK

IN BANKRUPTCY

NUNC PRO TUNC ORDER
AFFIRMING REFEREE ON REVIEW
(Referee's Order of January 15, 1973)

At a hearing herein on May 2, 1973, this court orally announced to the parties in interest certain decisions denying three motions to remit to the Referee and, instead, affirming the three prior orders of the Referee herein which had been certified; and said orders were all duly set forth on the docket sheet herein by the clerk of court.

It now appearing that a growing body of respected judicial opinion finds merit in setting forth such decisions on review of Referee's orders and associated matters on separate documents, as possibly necessary for strict and careful compliance with Rules 54(a) and 58, Federal Rules of Civil Procedure, on this court's own motion, therefore, and nunc pro tunc May 2, 1973,

IT IS ORDERED that Motion of Anna A. Phelps, filed March 2, 1973, "to Remit to Referee for Correction and Amplification of the Record Re: Petition for Review of Order of Referee in Bankruptcy, Dated and Entered January 15, 1973, for Injunctive Relief, and for an Investigation of Fraud in this Bankruptcy Proceeding" is DENIED.

FURTHER ORDERED that the said Order of the Referee in Bankruptcy herein, dated January 15, 1973, wherein petition to remove trustee herein was denied by said Referee, is in all respects AFFIRMED ON REVIEW.

Entered: December 4, 1973
Nunc pro tunc May 2, 1973


Robert D. Morgan
United States District Judge

16a

Appendix J

FILED

IN THE UNITED STATES DISTRICT COURT DEC 4 1973
SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

IN THE MATTER OF) c.....O'clock.....M
EDWARD JOHN KAZUBOWSKI,) WILLIAM J. LITTELL, CLERK
Bankrupt.)
IN BANKRUPTCY
NO. P-BK-71-782
NUNC PRO TUNC ORDER
AFFIRMING REFEREE ON REVIEW
(Referee's Order of January 26, 1973)

At a hearing herein on May 2, 1973, this court orally announced to the parties in interest certain decisions denying three motions to remit to the Referee and, instead, affirming the three prior orders of the Referee herein which had been certified; and said orders were all duly set forth on the docket sheet herein by the clerk of court.

It now appearing that a growing body of respected judicial opinion finds merit in setting forth such decisions on review of Referee's orders and associated matters on separate documents, as possibly necessary for strict and careful compliance with Rules 54(a) and 58, Federal Rules of Civil Procedure, on this court's own motion, therefore, and nunc pro tunc

IT IS ORDERED that Motion of Anna A. Phelps, filed March 2, 1973,
"to Remit to Referee for Preparation of Certificate of Review Pursuant to
Section 39a(8) of the Act [11 U.S.C. §67(a)(8)], and for Correction and
Amplification of the Record Re: Petition for Review of the Order Entered
and Filed January 26, 1973, for Injunctive or Other Relief, and for an
Investigation of Fraud in this Bankruptcy Proceeding" is DENIED.

FURTHER ORDERED that the said Order of the Referee in Bankruptcy herein, dated January 26, 1973, wherein said Referee refused to confirm sale of real estate herein because the price was inadequate, is in all respects AFFIRMED ON REVIEW.  16

Entered: Dec. 4, 1973
Nunc pro tunc May 2, 1973

Robert D. Morgan
United States District Judge

17a

Appendix K

FILED

IN THE UNITED STATES DISTRICT COURT DEC 4 1973
SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

IN THE MATTER OF) O'clock.....m
EDWARD JOHN KAZUBOWSKI,) WILLIAM J. LITTELL, CLERK
Bankrupt.)
IN BANKRUPTCY
NUNC PRO TUNC ORDER NO. P-BK-71-782
AFFIRMING REFEREE ON REVIEW
(Referee's Order of February 16, 1973)

At a hearing herein on May 2, 1973, this court orally announced to the parties in interest certain decisions denying three motions to remit to the Referee and, instead, affirming the three prior orders of the Referee herein which had been certified; and said orders were all duly set forth on the docket sheet herein by the clerk of court.

It now appearing that a growing body of respected judicial opinion finds merit in setting forth such decisions on review of Referee's orders and associated matters on separate documents, as possibly necessary for strict and careful compliance with Rules 54(a) and 58, Federal Rules of Civil Procedure, on this court's own motion, therefore, and nunc pro tunc May 2, 1973.

IT IS ORDERED that Motion of Anna Phelps, filed March 21, 1973,
"to Remit to Referee for Correction and Amplification of the Record Re:
Petition for Review from Order of Referee in Bankruptcy Dated and Entered
February 16, 1973, Ordering Petitioner to Vacate Premises and to Turn
Over Possession to the Trustees of the Bankruptcy Estate" is DENIED.

FURTHER ORDERED that the said Order of the Referee in Bankruptcy herein, dated February 16, 1973, wherein said Referee ordered the bankrupt, his mother, and his sister to vacate real estate, the possession of which belonged to the bankrupt estate, is in all respects AFFIRMED
ON REVIEW.

Entered Dec. 4, 1973
Nunc pro tunc May 2, 1973

Robert D. Morgan
United States District Judge

18a

Appendix L

FILED
at _____ o'clock _____ M

JAN 15 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

IN THE MATTER OF
EDWARD JOHN KAZUBOWSKI,
Bankrupt. }
IN BANKRUPTCY
No. P BK 71 782

O R D E R

This matter coming on for hearing on the petition of ANNA A. PHELPS, creditor, to remove WILLIAM H. CHRISTISON as Trustee from the within proceeding, and the said ANNA A. PHELPS being present in open Court and representing herself and the said WILLIAM H. CHRISTISON, Trustee, being present in open Court and representing himself, and the Court having heard evidence and arguments of counsel:

IT IS ORDERED, ADJUDGED AND DECREED that said petition to remove Trustee be, and hereby is, denied.

~~Referee in Bankruptcy~~

19a

Appendix M

FILED
at _____ o'clock _____ M

JAN 26 1973

STEPHEN J. COVEY
Referee in Bankruptcy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

IN THE MATTER OF
EDWARD JOHN KAZUBOWSKI,
Bankrupt. }
IN BANKRUPTCY
No. P BK 71 782

O R D E R

This matter coming on for hearing on the report of auction sale and petition to confirm sale of real estate filed herein by WILLIAM H. CHRISTISON, the duly appointed, qualified and acting Trustee of the above bankruptcy estate, and the Court having heard objections to said report and petition and being fully advised in the premises:

IT IS ORDERED, ADJUDGED AND DECREED that said petition to confirm sale of real estate is hereby denied because of the inadequate purchase price in the amount of \$14,500.00, which is less than 75% of the appraised value of said real estate and because the Trustee did not have exclusive possession of said real estate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the earnest money in the amount of \$1,450.00 received from DAVID F. GAMBLE and EVELYN GAMBLE, Kewanee, Illinois, be returned to them by said Trustee.

~~Referee in Bankruptcy~~

EXHIBIT "A"

20a

Appendix N

FILED
o'clock M

FEB 16 1973

STEPHEN J. COVEY
~feree in Bankrupt

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

IN THE MATTER OF

EDWARD JOHN KAZUBOWSKI,
Bankrupt.

IN BANKRUPTCY

No. P BK 71 782

O R D E R

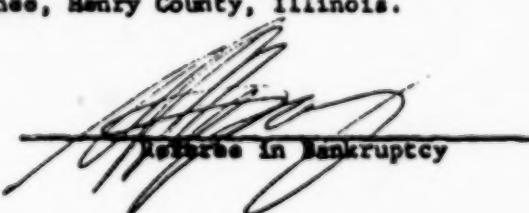
This matter coming on for hearing on the petition of WILLIAM H. CHRISTISON for possession of the bankrupt's real estate and for an order on the bankrupt and his family to vacate the premises, and the Trustee appearing in open Court and the bankrupt not appearing but making default.

The Court finds that the matters and things set forth in the Trustee's petition are true.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that EDWARD JOHN KAZUBOWSKI, the above named bankrupt, ANNA A. PHELPS, sister of the bankrupt, MARY KAZUBOWSKI, mother of the bankrupt, and all other family members or other persons residing on the below described premises be, and they hereby are, ordered to vacate said premises and turn over possession of the same to WILLIAM H. CHRISTISON, Trustee in Bankruptcy herein, on or before March 12, 1973. Said premises are described as follows:

Lot Three (3) in Houle's Subdivision of Lot Seven (7) of the Original Town of Wethersfield, Henry County, Illinois, also described as Lot Three (3) in Block One (1) of Moore's replat of Lots Seven (7) and Twenty-two (22), Original Town of Wethersfield, now in the City of Kewanee, Henry County, Illinois.

EXHIBIT 'A'


~feree in Bankruptcy